

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

LESLIE BRIGGS, as next friend )  
of T.W. and B.S.; EVAN WATSON, )  
as next friend of C.R.; and, )  
HENRY A. MEYER, III, as next )  
friend of A.M., for themselves )  
and for others similarly situated, )

Plaintiffs, )

v. )

Case No. 23-cv-81-GKF-JFJ

ALLIE FRIESEN, in her official )  
capacity as Commissioner of the )  
Oklahoma Department of Mental )  
Health and Substance Abuse )  
Services; and DEBBIE MORAN, in )  
her official capacity as Interim )  
Executive Director of the Oklahoma )  
Forensic Center, )

Defendants. )

TRANSCRIPT OF FAIRNESS HEARING

**BEFORE THE HONORABLE GREGORY K. FRIZZELL**

**UNITED STATES DISTRICT JUDGE**

JANUARY 15, 2025

**REPORTED BY:**

**BRIAN P. NEIL, RMR-CRR**  
**United States Court Reporter**

*Brian P. Neil, RMR-CRR*  
*U.S. District Court - NDOK*

A P P E A R A N C E S

**Frederic Dorwart, Paul DeMuro, and David W. Leimbach,** Attorneys at Law, Frederic Dorwart Lawyers, 124 East 4th Street, Tulsa, Oklahoma, 74103, attorneys on behalf of the Plaintiffs;

**Nicholas Southerland,** Attorney at Law, Oklahoma Disability Law Center, 5555 East 71st Street, Suite 9100, Tulsa, Oklahoma, 74136, attorney on behalf of the Plaintiffs;

**Gentner F. Drummond,** Attorney General, **Erin Moore** and **Tracy Neel,** Office of Oklahoma Attorney General, 313 N.E. 21st Street, Oklahoma City, Oklahoma, 73105, attorneys on behalf of the Defendants;

**William W. O'Connor and Brian T. Inbody,** Attorneys at Law, Hall Estill, 521 East 2nd Street, Suite 1200, Tulsa, Oklahoma, 74120, attorneys on behalf of the Defendants.

Wednesday, January 15, 2025

\* \* \* \* \*

**DEPUTY COURT CLERK:** This is Case No.

23-CV-081-GKF-JFJ, Leslie Briggs, et al., v. Allie Friesen, et al. Counsel, please state your appearances for the record.

**MR. DEMURO:** Good morning, Your Honor. May it please the court, on behalf of the plaintiffs and plaintiffs' class are class counsel Paul Demuro, Frederic Dorwart, David Leimbach. Also class counsel Nick Southerland is here as well from the Oklahoma Disability Law Center.

We also have personally present at your instruction, Your Honor, the next friends, the lawyer representative, guardian representatives of the original named plaintiffs in the case, Leslie Briggs from Tulsa, Evan Watson from Lawton, and Hank Meyer from Oklahoma City. We're very grateful to have them here.

We're also accompanied today by Neil Gowensmith, one of the named consultants in the consent decree and one of the chief consultants in the drafting of the consent decree. Also, Dr. Crystal Hernandez is with us, the former defendant who has also submitted affidavits in this matter. Thank you, Your Honor.

**THE COURT:** Good morning.

**MR. DRUMMOND:** Morning, Judge. Gentner Drummond on behalf of the State of Oklahoma. Appearing with me are Erin

1 Moore and Tracy Neel. I'd like to also acknowledge and have  
2 the court to be aware that Steve Kunzweiler, elected District  
3 Attorney for the Tulsa County, is present, as well as Dr. Kathy  
4 LaFortune. Thank you.

5 **THE COURT:** Good morning.

6 **MR. O'CONNOR:** Your Honor, Bill O'Connor and Brian  
7 Inbody for the defendants.

8 **THE COURT:** Good morning. And with regard to the  
9 issues concerning representation, it's my understanding that  
10 the Oklahoma Supreme court is likely to make a decision with  
11 regard to the issues arising in another case. As I understand  
12 it, the case is pending in the U.S. District Court in the  
13 District of Columbia. And although this court has some  
14 definite opinions with regard to the law, my opinions, frankly,  
15 are not controlling because it will be the decision of the  
16 Oklahoma Supreme Court that will guide this court in resolving  
17 those two issues.

18 So at least for today's purposes, as in the case of  
19 approval of this consent decree, we'll obviously allow both the  
20 Attorney General and the attorneys proposed by Director Friesen  
21 to speak because they obviously were part and parcel of the  
22 agreement.

23 So Newberg on Class Actions suggests that hearings such  
24 as the one today proceed in four stages. First, the settling  
25 parties formally propose the settlement to the court for final

1 approval walking the court through the terms of the settlement.  
2 The counsel present are familiar with the requirements of  
3 Federal Rule of Civil Procedure 23 as well as the four  
4 threshold requirements for class certification. We've  
5 addressed those. I think class certification requirements are  
6 fairly clear.

7 But, Mr. Demuro, you may proceed, sir.

8 **MR. DEMURO:** Thank you, Your Honor. May it please  
9 the court, yes, today we are requesting that the court grant  
10 final approval to what we have called the "amended consent  
11 decree" and also issue a contingency that the final approval is  
12 contingent upon the Oklahoma legislature in a joint resolution  
13 approving the amended consent decree, and the Attorney General  
14 will speak to that piece of what we anticipate will be a prompt  
15 legislative approval. The Attorney General will speak directly  
16 to that and I'll leave that to my colleague to do that.

17 You know, as I was preparing for this hearing and going  
18 over the history of this case, Your Honor, the phrase that came  
19 to mind was "iron sharpening iron." And what do I mean by  
20 that?

21 **THE COURT:** I think that's appropriate.

22 **MR. DEMURO:** This court -- in a couple of different  
23 ways, this court has engaged in extremely active, diligent  
24 analysis and oversight of the consent decree process as is this  
25 court's duty. As a result of that, the product that we have

1 here before you today is a superior product, a superior  
2 document to when we started, legally unassailable in my view.  
3 There is no reasonable observer that could look at this process  
4 and come to any other conclusion, that this court has become  
5 fully apprised and is fully informed of the amended consent  
6 decree provisions and all the requirements of Rule 23.

7 **THE COURT:** Well, frankly, I didn't think of myself  
8 as one of the pieces of iron; I was thinking about you all.  
9 But in any event, go ahead.

10 **MR. DEMURO:** Well, and that certainly was the second  
11 point of that, why that phrase is useful and I think  
12 illustrates where we're at.

13 And just a brief history here for the record, because I  
14 think Newberg also says on class actions on what the court's  
15 role here is in final-approval stages is to make sure it's  
16 adequately informed about the Rule 23 factors, a lot of  
17 discretion that the court has to come to that place.

18 But if you look at the history, Judge, of when we filed  
19 our first motion for preliminary approval that was back in June  
20 of 2023 -- excuse me -- June of 2024, docket 46, shortly after  
21 that the court issued an extensive order, docket 47, that told  
22 us, quite frankly, that your filing was deficient and needed to  
23 be bolstered by additional information that the court needed to  
24 assess preliminary approval under a different Rule 23  
25 preliminary approval standard where we had to show that final

1 approval was likely.

2 That resulted in a round of supplemental briefings  
3 where we submitted at docket 48 our first supplemental brief  
4 where we did a long exposition -- shouldn't say long -- an  
5 adequate exposition of the due process underpinnings of the  
6 claim that's at issue here and the very clear due process  
7 interests and rights that are at stake and they're being  
8 violated every day.

9 We did a detailed pronouncement of the negotiation  
10 process to satisfy the court that this was the amended -- the  
11 original consent decree was the product of arm's length  
12 negotiations, that the Attorney General's Office took first a  
13 traditional defense posture and filed a motion to dismiss. But  
14 then, in my view, very courageously and justly and accurately  
15 the Attorney General, after looking at this case and studying  
16 the data, quickly came to the conclusion that the due process  
17 rights of these class members are being violated, and not only  
18 is it compromising the due process rights of the class members,  
19 but it's compromising the criminal justice system in Oklahoma  
20 in providing prompt relief for crime victims for having these  
21 cases stalled. And so we moved quickly into the procedure of  
22 trying to fashion a remedy.

23 The supplemental briefing didn't stop there, Your  
24 Honor. Your Honor had ordered us to provide more briefing on  
25 the attorneys' fees. In response to that, we provided very

1 robust documentation that satisfied the court with respect to  
2 the reasonableness of the fees. We had a hearing on August  
3 15th, a very detailed hearing. Your Honor expressed some  
4 misgivings about the community-based restoration of the plan  
5 and whether or not the outpatient provisions complied with  
6 Oklahoma law.

7           You asked for supplemental briefing on that so we filed  
8 a third supplement addressing that issue, and Your Honor  
9 ultimately ruled, as you know, in your second substantive order  
10 on the consent decree that, in fact, the court's view was that  
11 the community-based restoration program, insofar as it  
12 permitted outpatient treatment of class members, didn't comport  
13 with Oklahoma law.

14           You asked us to go back to the drawing board  
15 essentially on that provision, which we did, resulting in  
16 another -- a fourth supplemental, I'll say, to the original  
17 briefing where we fashioned a contingent -- what we call a  
18 "contingent community-based program" where that will only kick  
19 in if and when the legislature modifies the law to comply with  
20 the court's ruling and modifies Oklahoma law to permit the type  
21 of outpatient treatment that we all think would help this  
22 problem and we hope that the legislature in its wisdom will see  
23 that too.

24           Of course, that wasn't the end of it. After we  
25 submitted the supplemental briefing and the contingency and



1 proposed the contingency component of the community-based plan,  
2 the court did grant a preliminary approval of the original  
3 consent decree. In that preliminary approval, the court took  
4 great pains to specify additional notice requirements that the  
5 court felt necessary, particularly future class members, and  
6 recommending that we give notice to the Oklahoma bar criminal  
7 defense -- excuse me -- yeah, the criminal division of the  
8 Oklahoma bar.

9 The point being here is that the court did an active  
10 review of the consent decree, the notice provisions, a second  
11 time -- this is the original consent decree -- and instructed  
12 us to proceed in a manner consistent with due process and Rule  
13 23, which we did.

14 Thereafter, the governor, Governor Stitt, filed his  
15 letter notifying the court of the down-vote by the contingency  
16 review board that had voted against the consent decree in its  
17 then current configuration and that caused some concern about  
18 where we go.

19 The court promptly held a status conference on October  
20 1st, 2024, and at the plaintiffs' suggestion at the end of that  
21 conference, that we -- we were close to a deal and we ought to  
22 try to see if we can reach a deal and get across the goal line,  
23 I think the analogy was, and we should go to a settlement  
24 conference.

25 The court granted that -- or acceded to that idea and

1 under the great contribution of the adjunct settlement judge,  
2 Lane Wilson, in his great efforts and the folks from Hall  
3 Estill who had entered their appearance who -- again, this is  
4 the iron sharpening iron -- an eleven- to thirteen-hour  
5 mediation settlement conference, depending on who was keeping  
6 score of the time, and what resulted from that process in my  
7 view was a stronger document, a stronger document in the  
8 fundamental sense that it now has the absolute approval,  
9 personal approval, of the defendants and particularly the  
10 commissioner. You know, these type of consent decrees work  
11 best when all sides have agreed, all key stakeholders have  
12 agreed. That's how they work. So in that sense, the documents  
13 were better, became sharper, became better. We made some  
14 modifications that I think will incentivize the department to  
15 perform.

16 So we filed on the heels of that -- that was November  
17 13th -- and you held another the status conference on the 18th  
18 of November and asked us to file another motion for preliminary  
19 approval of the amended consent decree which we did -- which we  
20 promptly did. And Your Honor in that same month granted  
21 preliminary approval again of the amended consent decree, set  
22 out a schedule for a second round of notices along the lines of  
23 the first, but approved the second form of the notice. You had  
24 approved the first form of the notice.

25 I'll point out for the record the first notice was sent

1 to multiple stakeholders in this matter. We were very careful  
2 to -- we sent it out not only to class members, but because of  
3 their unique status as being incompetent, that was not deemed  
4 to be sufficient obviously. So we sent it to their guardians  
5 in their state court criminal cases, their defense attorneys in  
6 the state court criminal cases, all of the district attorneys  
7 in the state of Oklahoma, all of the public defender and OIDS  
8 defenders in the relevant counties and to every district court  
9 clerk in the state of Oklahoma. We did that in round one.

10 We did the same thing under the court's direction in  
11 round two when the court preliminary approved the amended  
12 consent decree and set out an order that set out a timetable to  
13 do that. We have -- and I certified in our notice of written  
14 objections that we filed with the court, which was docket  
15 No. 95, which we filed last week, I certified there and I'll  
16 certify here that we've complied with the court's notice  
17 requirements a second time.

18 We received objections from approximately 53 different  
19 individuals, most of them were class members, and described  
20 those in our notice. We received a very insightful letter from  
21 District Attorney Kunzweiler, which we're very grateful for. I  
22 mentioned in my papers that he was one of the early  
23 stakeholders that we consulted during the drafting process, and  
24 we're very grateful for his input and guidance on this issue,  
25 among many other stakeholders that we consulted.

1 We have 53 people that were mostly class members and,  
2 Your Honor ordered us to produce those in camera which we did.  
3 Your Honor has reviewed all of those, again, I think which  
4 demonstrates the diligence of this court in becoming aware of  
5 all the necessary factors.

6 From our standpoint, Your Honor, there was only one  
7 comment that we would construe as an objection from one of the  
8 class members, which we dealt with in our papers, and I don't  
9 need to repeat it here. I will say for the record I don't see  
10 any class member or their representative in the courtroom  
11 wanting to give testimony today or wanting to be heard. I'm  
12 sure Your Honor will make that announcement or request that,  
13 but I don't see any and haven't been advised of any class  
14 member or any other person who wanted to take the podium and  
15 make a comment. Obviously, Your Honor will make that query but  
16 we don't see that here today.

17 And all of that, Your Honor, brings us to where we are  
18 today. As I said, no reasonable observer could look at this  
19 and come to any other conclusion than the court is completely  
20 informed, well-informed, of all the necessary elements of this  
21 amended consent decree and has discharged its duty faithfully  
22 and is equipped to make the ruling that we are asking the court  
23 to make today. We've incorporated, Your Honor, all of our  
24 prior briefing in our motion for final approval. All of the  
25 23(g) factors are met in our view and we've set that out in

1 great detail. If Your Honor has any questions on any of the  
2 factors, I'd be happy to entertain them.

3 We've set out at great length in our prior papers the  
4 structure of the plan. We've described the consent decree in  
5 great detail and the amended consent decree in great detail in  
6 the second motion for preliminary approval, so I think we've  
7 satisfied that element, Your Honor, at least on paper, that  
8 we've described the nature of the agreement. We have submitted  
9 an executed copy of the agreement.

10 And, again, what is very salient here, Judge, is you've  
11 got the signature of the Attorney General, signature of class  
12 counsel, and the recorded record statements of the defendants  
13 personally, that they all approve of the amended consent decree  
14 and want to get started to implement its provisions.

15 We do have, as I mentioned at the outset, Dr. Crystal  
16 Hernandez here who submitted a prior affidavit. Dr. Hernandez  
17 was the former director of OFC, and therefore, a former  
18 defendant who we have utilized throughout this process after  
19 she left that post.

20 We also have Neil Gowensmith, Dr. Neil Gowensmith, who  
21 is also one of the named consultants who has submitted  
22 affidavits in support of the plan and tailored to the Rule 23  
23 factors about the relief being adequate and tailored evenly to  
24 all of the class members as best as possible. Both of those  
25 experts are available to the court should you have any

1 questions.

2 But in sum, Your Honor, I think we've put sufficient  
3 evidence before Your Honor in the papers that we have already  
4 filed, the affidavits and other evidentiary materials, for the  
5 court to make the requisite findings under Rule 23(e)(2). And  
6 so we would ask you to do so, to grant final approval of the  
7 amended consent decree, contingent upon the legislature voting  
8 to approve the consent decree in accordance with Title 51  
9 Section 200.

10 **THE COURT:** I have two questions, possibly a third.

11 **MR. DEMURO:** Yes.

12 **THE COURT:** First, I'm going to inquire as to all of  
13 the representatives with regard to the time frames included in  
14 the amended proposed consent decree and specifically the  
15 three-year offramp and the extension of the period for the OFC  
16 to implement a plan for staffing from 90 days to 120 days.

17 Are all of the signatories in agreement that those  
18 amendments are reasonable and effective in distributing relief  
19 to the class?

20 **MR. DEMURO:** Absolutely, Your Honor. You can query  
21 whomever -- obviously whomever you choose. But, yes, the  
22 Attorney General has signed off on that, the commissioner has  
23 signed off on that at our mediation and subsequently in court.  
24 And, you know, what I call the "early exit ramp option" was  
25 something the department -- both of the changes that you cited,

1 Your Honor, are something that the commissioner wanted to  
2 include and we agreed to include. Nobody would be more happy  
3 than class counsel if the early exit ramp was available and the  
4 prerequisites for the early exit ramp essentially being  
5 substantial compliance for the same period of nine months. If  
6 that occurred, nobody would be cheering louder than class  
7 counsel.

8 So in answer to your question, yes, all sides, all  
9 consultants have agreed that those are fair and reasonable to  
10 the class.

11 **THE COURT:** General, do you agree, sir, that those  
12 two amendments are reasonable and effective in distributing  
13 relief to the class?

14 **MR. DRUMMOND:** I do.

15 **THE COURT:** And Commissioner Friesen, does the  
16 commissioner agree that those two amendments are reasonable?

17 **MS. FRIESEN:** Yes, Your Honor, we concur.

18 **THE COURT:** Secondly, with respect to the  
19 signatories on the amended consent decree, I obviously have no  
20 control as to when the Supreme Court is going to rule. The  
21 "word on the street" is that that's fairly imminent. I take it  
22 that if the Supreme Court takes the position, as they have in  
23 another previous case, as it has been briefed before this  
24 court, that both counsel have roles, the Attorney General with  
25 respect to what the Attorney General believes to be the

1 interest of the state, and in cases of conflict the  
2 commissioner has a right to have counsel, then would it not be  
3 proper, given that there may be enforcement issues, to have  
4 counsel for the commissioner also as signatories to the amended  
5 decree?

6 **MR. DEMURO:** Well, I'll defer to the Attorney  
7 General on that. My position is, as we sit here today, the  
8 Attorney General is the attorney for the defendants.

9 **THE COURT:** I understand.

10 **MR. DEMURO:** That status has not changed.

11 **THE COURT:** Right.

12 **MR. DEMURO:** We certainly have welcomed the  
13 participation of Hall Estill and, as I've said, of the iron  
14 sharpening iron, and they have been brought along and copied on  
15 everything and have voiced -- as evidenced by the  
16 commissioner's pronouncement today, they have voiced their  
17 approval of the consent decree.

18 So as far as class counsels' standpoint is concerned,  
19 at this moment the Attorney General is the duly-authorized  
20 representative of these defendants and so we think we have a  
21 document that's prepared to be entered now. If the legal  
22 circumstances change and this court makes other rulings, then  
23 we can adjust at that time.

24 **THE COURT:** There's a bit of speculation as to what  
25 the Supreme Court may do.



1           General, I know neither one of us has control over what  
2     the Supreme Court will do, but you concur that whatever they do  
3     is likely to control the resolution of the two outstanding  
4     motions before this court?

5           **MR. DRUMMOND:** I think that it would certainly do  
6     that.

7           **THE COURT:** Okay. So --

8           **MR. DRUMMOND:** Although, I would not -- I would  
9     think the cerebral energy at the bench today would be equal to  
10    the nine justices that might otherwise make that --

11          **THE COURT:** Well, they may --

12          **MR. DRUMMOND:** Unless, of course, you got it wrong.

13          **THE COURT:** Yeah, that's right.

14          **MR. DRUMMOND:** But no --

15          **THE COURT:** What one always does as a judge is what  
16    one thinks is the right legal thing to do. Sometimes appellate  
17    courts have different ideas.

18          **MR. DRUMMOND:** That's true. But as it relates to --  
19    I don't think that -- if the court wants to have Hall Estill  
20    join in signing, I don't think it impairs the authority of the  
21    Attorney General and my ego is not involved in this. I want  
22    this resolved and I want us on a path toward resolution.

23          **THE COURT:** Right. Assuming that they do not decide  
24    the issue by the time the legislature approves the consent  
25    decree, you don't have any objection to having Hall Estill sign

1 on behalf of the commissioner?

2 **MR. DRUMMOND:** No objection.

3 **THE COURT:** Okay. Thank you.

4 **MR. DRUMMOND:** Reserving all of the briefing --

5 **THE COURT:** Of course. Of course.

6 **MR. DRUMMOND:** I don't think that -- yeah, you know  
7 my position.

8 **THE COURT:** Yes, sir.

9 **MR. DRUMMOND:** But in the interest of justice and  
10 advancing this ball, I'd be happy for that to be the case.

11 **THE COURT:** Thank you. And I take it, Mr. O'Connor,  
12 you would agree with that approach?

13 **MR. O'CONNOR:** Yes, Your Honor.

14 **THE COURT:** Thank you. If you could approach the  
15 podium, Mr. O'Connor.

16 **MR. O'CONNOR:** I just wanted to add, Your Honor,  
17 that the factual scenarios for what's before the Supreme Court  
18 are a little bit different --

19 **THE COURT:** Right.

20 **MR. O'CONNOR:** -- from what we have here. So that's  
21 why --

22 **THE COURT:** Right.

23 **MR. O'CONNOR:** -- I don't want to just let the  
24 record lie that whatever that court does we think it's  
25 applicable because there are some unique facts.

1           **THE COURT:** I was concerned about that and I'm not  
2 familiar with the specific facts there. So you're suggesting  
3 that perhaps the resolution of that case may not resolve the  
4 two pending motions before this court?

5           **MR. O'CONNOR:** I think it's a possibility depending  
6 on how they frame the opinion.

7           **THE COURT:** All right. Thank you very much.

8           **MR. O'CONNOR:** Thank you.

9           **THE COURT:** All right. One moment.

10                           *(Discussion held off the record)*

11           **THE COURT:** All right. The next step of the four  
12 steps before the court is to hear from class members to present  
13 objections or other statements that class members or class  
14 member representatives believe to be relevant to the court's  
15 consideration today of the proposed consent decree.

16           Are there any objections or other statements that class  
17 members believe to be relevant in the consideration of the  
18 proposed consent decree? All right. I see no individuals.

19           Mr. Demuro.

20           **MR. DEMURO:** Yes, Your Honor. I left one really  
21 important thing, at least important to me, and I think should  
22 be important for all members of the bar of Oklahoma. One  
23 headline of this case is the work that lawyers can do for the  
24 good of the common wheel with no thought of reward to  
25 themselves. The three next friends who are in the courtroom

1 are examples of that, Leslie Briggs, Evan Watson, and Henry  
2 Meyer. All are members of the Oklahoma bar, all acting outside  
3 of their normal practice areas to become guardians of these  
4 people that are in desperate need of representation, all  
5 following this case, taking care to be apprised of it  
6 throughout, expecting no compensation in return says something  
7 about -- a lot about, I think, the integrity of the Oklahoma  
8 bar and its lawyers. I'd like to call that to the court's  
9 attention.

10 **THE COURT:** Thank you. The court is -- I'm very  
11 aware of the public service performed by members of the bar  
12 without compensation. In another consent decree I have before  
13 this court, we have counsel present here today, Mr. Dorwart,  
14 who has donated much of his time and money in the foster care  
15 case, and those sorts of things often go unnoticed and need to  
16 be recognized. So thank you all for doing so.

17 I'd ask do either of -- or any of those three wish to  
18 be heard today? Mr. Meyer?

19 **MR. MEYER:** No, Your Honor. I'm very much in favor  
20 of the amended consent that's before the court and the  
21 cooperation with the Attorney General that he's shown in this  
22 negotiations and I'm grateful for Dorwart's firm leading this  
23 charge, Paul Demuro and for Frederic, along with Mr. Leimbach.  
24 I very much appreciate it because I know the problems that  
25 exist in mental health sitting on the criminal justice panel in

1 the Western District and doing an awful lot of this work and I  
2 appreciate it, Your Honor.

3 **THE COURT:** Thank you, sir.

4 Mr. Kunzweiler, any observations that you would like to  
5 make? I know you've been an active part of this matter before  
6 the court today and I've read with interest your public  
7 statements with regard to this matter.

8 *(Discussion held off the record)*

9 **THE COURT:** Look, as a former state court judge, I'd  
10 let people wander around the courtroom but unfortunately we  
11 can't do that here.

12 **MR. KUNZWEILER:** Yeah. This formality is foreign to  
13 me, Judge. Thank you for recognizing me and I do appreciate  
14 the Attorney General doing that as well.

15 I would simply state that it goes without saying we  
16 actually shouldn't be here. This should never have had to have  
17 happened if government -- if government was doing the job it  
18 was supposed to be doing. So I have a great deal of  
19 appreciation to the attorneys who have advanced this measure on  
20 behalf of those poor souls who have been afflicted and who have  
21 been mired in a setting that they shouldn't be obligated to  
22 endure.

23 I think the recommendations for a disposition moving  
24 forward, as Mr. Demuro has outlined, involving eleven or  
25 thirteen hours worth of settlement conferences is a positive

1 step forward. I think they worked very hard to get to this  
2 point. It certainly goes without saying that I think everybody  
3 was well-invested in this thing, and I think this is the best  
4 solution for a problem that should have never materialized in  
5 my opinion. But thank you for the opportunity to speak.

6 **THE COURT:** And I would be remiss if I didn't give  
7 Dr. LaFortune an opportunity to be heard today, both a lawyer  
8 and a doctor with specialization in this area and one of the  
9 experts that I heavily rely upon in opinions in cases before  
10 this court. Dr. LaFortune, anything to add? Come on up.

11 **DR. LAFORTUNE:** I'll offer a short statement. Thank  
12 you, Your Honor, for the opportunity to talk about this today  
13 and I appreciate your comments just now.

14 When I began to work at the Tulsa County Public  
15 Defender's Office in 2022, I immediately began to see the  
16 problem. At that point we scheduled Zoom meetings with family  
17 members and I had family members who called me who wanted to  
18 know what was happening to their loved one in the jail and why  
19 things weren't improving and when were they supposed to be  
20 taken care of. So we had judges, state court judges, family  
21 lawyers, assistant district attorneys, public defenders, and we  
22 talked about this via Zoom meetings for several months. We  
23 also had the Oklahoma Appleseed Project, people from that  
24 organization, who came to speak.

25 At that point I spoke with Mr. Corbin Brewster, who was

1 chief public defender at the time, and relayed my concerns  
2 about what was not happening in the jail. And thank God that I  
3 stand here today in front of you and the entire audience and  
4 thank everyone who has been involved in this, because as  
5 Mr. Kunzweiler stated just a minute ago, this should never have  
6 happened.

7 I worked at Eastern State Hospital from 1996 to 1999  
8 and things were never perfect but they were never in the shape  
9 that they are today. I appreciate all the comments and all the  
10 time that you personally have spent in looking into this case.  
11 Thank you.

12 **THE COURT:** Thank you. There being no objections,  
13 other than the one comment that Mr. Demuro mentioned, and the  
14 plaintiffs have responded to that possible objection in the  
15 writings, so I don't believe it's necessary that Mr. Demuro go  
16 any further with regard to replying.

17 The fourth step here is to render a decision. As both  
18 Mr. Kunzweiler and Dr. LaFortune have stated here, I want to  
19 commend all the parties for their work in reaching a consent  
20 decree in this matter and their commitment to solving what is  
21 obviously a pressing issue in Oklahoma.

22 The court has before it the joint motion for final  
23 approval and entry of amended consent decree at docket No. 99  
24 in which the parties ask the court first to find that the  
25 amended proposed consent decree is fair, reasonable, and

1 adequate to the class; second, to grant final certification of  
2 the class; third, to appoint class counsel; and four, to  
3 approve the amended consent decree subject to the conditions  
4 subsequent that the parties obtain legislative approval of the  
5 amended proposed consent decree and upon notice of such  
6 approval enter the amended proposed consent decree as judgment  
7 of this court.

8 Oklahoma Statute Title 51 Section 200 prohibits the  
9 state from entering into a consent decree that would  
10 necessitate appropriation by the legislature in excess of  
11 \$250,000, as the amended proposed consent decree would require,  
12 without legislative approval or approval of the contingency  
13 review board when the legislature is not in regular session.  
14 The parties agree that legislative approval is necessary in  
15 this case but have not yet obtained such approval.

16 Accordingly, the state cannot yet enter into the  
17 settlement agreement in the consent decree and there can be no  
18 judgment by consent until the legislature approves it.

19 See generally *Sawyer v. Mid-Continent Petroleum*  
20 *Corporation*, 236 F.2d 518, 522 (10th Cir. 1956).

21 For this reason, the court cannot enter the amended  
22 proposed consent decree as a judgment subject to the conditions  
23 subsequent of legislative approval. However, the court has  
24 reviewed the amended proposed consent decree and finds that it  
25 is fair, reasonable, and adequate to the class. Specifically,



1 the class representatives and class counsel have adequately  
2 represented the class. The amended proposed consent decree was  
3 the result of fair, honest, and arm's length negotiations. The  
4 amended proposed consent decree treats class members equitably  
5 relative to each other. And the parties have stipulated that  
6 the amended proposed consent decree is fair, reasonable, and  
7 adequate to the class.

8 With respect to the adequacy of the nature of the  
9 approached relief, the court notes the outcome of the  
10 litigation remains in doubt and a risk exists that if this  
11 matter proceeded to trial, plaintiffs would not receive the  
12 requested relief. Further, settlement at this time outweighs  
13 the immense costs of full-tilt adversarial litigation.

14 The court further finds that the amended proposed  
15 consent decree is an effective method of distributing relief to  
16 the class and is consistent with Oklahoma law provided that it  
17 is approved by the Oklahoma legislature.

18 The court acknowledges that one class member submitted  
19 a comment which the court has construed as an objection.  
20 Therein, the class member objects to the amended proposed  
21 consent decree's provision regarding "best efforts" stating as  
22 follows: "I agree and I have no objections to the original  
23 ruling but have reservations about the amendments. I feel that  
24 the good-faith exceptions allows defendant to squirrel out of  
25 any monetary losses they may have in past and future misdeeds."

1           The court is sympathetic; however, the provision is not  
2 prohibited by Oklahoma law. It imposes a high burden on the  
3 defendants. Further, it was necessary to secure the parties'  
4 agreement. The court must give significant weight to the views  
5 of the state government officials with frontline responsibility  
6 for administering the program.

7           The court references counsel to *Jackson v. Los Lunas*  
8 *Community Program*, 880 F.3d 1176, 1192 (10th Cir. 2018).

9           Accordingly, the objection is respectfully overruled  
10 and the court concludes that the relief provided for the class  
11 by the amended proposed consent decree is adequate. For all of  
12 these reasons, the court concludes that the amended proposed  
13 consent decree is fair, reasonable, and adequate.

14           Turning to the requirements for class certification,  
15 the court concludes that the class is, first, so numerous that  
16 joinder of all members is impracticable; second, there are  
17 questions of law or fact common to the class, specifically  
18 whether the department and the OFC's failure to provide  
19 competency restoration treatment in a timely manner, coupled  
20 with the class members' continued detention, violates the class  
21 members' due process rights; third, the class representatives'  
22 claims are typical of the claims of the class; and four, the  
23 class representatives and class counsel will fairly and  
24 adequately protect the interests of the class. Thus, the  
25 requirements of Rule 23(a) are satisfied.

1 Further, Rule 23(b)(2) is satisfied, as the department  
2 and OFC's alleged failure to provide timely competency  
3 restoration treatment is generally applicable to all class  
4 members and the amended proposed consent decree addresses the  
5 class as a whole and it is unnecessary to differentiate between  
6 class members. Accordingly, certification of the class is  
7 appropriate.

8 As to class counsel, the court concludes that class  
9 counsel has and will continue to fairly and adequately  
10 represent the class. Thus, the court is prepared to finally  
11 appoint class counsel.

12 Finally, based on the parties' certifications as to  
13 notice, the court concludes that the notice and amended notice  
14 were fair, reasonable, and "apprised interested parties of the  
15 pendency of the action and afforded them an opportunity to  
16 present their objections."

17 That's from *Tennille, T-e-n-n-i-l-l-e, v. Western Union*  
18 *Company*, 785 F.3d 422, 436 (10th Cir. 2015).

19 Further, the method of notice was reasonably calculated  
20 to ensure the best practicable notice under the circumstances  
21 and is consistent with due process.

22 The court will enter a written order providing a more  
23 detailed analysis. However, for the reasons stated today, upon  
24 the Oklahoma legislature's approval of the amended proposed  
25 consent decree, the court is prepared to grant the joint motion

1 for final approval and entry of amended consent decree at  
2 docket 99, certify the class, and enter the amended proposed  
3 consent decree as the final judgment of this court.

4 Is there anything else that we can accomplish today,  
5 Mr. Demuro?

6 **MR. DEMURO:** No, Your Honor. One housekeeping.  
7 What's Your Honor's preference for how we notify Your Honor of  
8 the legislative approval? We just file a notice, something of  
9 that nature, Your Honor?

10 **THE COURT:** Please.

11 **MR. DEMURO:** Okay.

12 **THE COURT:** General, anything further?

13 **MR. DRUMMOND:** Nothing further. Thank you, Your  
14 Honor.

15 **THE COURT:** Mr. O'Connor?

16 **MR. O'CONNOR:** No, Your Honor.

17 **THE COURT:** Very well.

18 *(Discussion held off the record)*

19 **THE COURT:** There is a pending motion to file a  
20 supplement to one of the two remaining motions before the  
21 court.

22 General, do you wish to have your office file a  
23 response to that motion or are you willing to allow the  
24 supplement to be filed or do you wish to --

25 **MR. DRUMMOND:** I visited with my solicitor general

1 this morning. He asked that we be given the time to respond.

2 **THE COURT:** All right. And how much time does  
3 Mr. Gaskins need?

4 **MR. DRUMMOND:** Whatever is allotted by local rule.

5 **THE COURT:** Okay. That's fine. I think we'll --  
6 Mr. O'Connor.

7 **MR. O'CONNOR:** One thing I would add is we would --  
8 I did not seek to file the supplement or its exhibits under  
9 seal. And just so that they're clear -- we're clear on  
10 motivations. We would file it under seal, if allowed. We're  
11 not trying to --

12 **THE COURT:** I take it there's no objection to that,  
13 if allowed? Thank you.

14 **MR. O'CONNOR:** I just didn't put that --

15 **THE COURT:** Yeah, I think that's appropriate here.  
16 So we'll -- although typically matters filed under seal are not  
17 favored, I think it is appropriate here.

18 **MR. O'CONNOR:** Thank you.

19 **THE COURT:** Very well. We'll await the response to  
20 that motion.

21 **MR. DRUMMOND:** And, again, candidly, I mean,  
22 whatever the court's pleasure. I mean, I don't have any  
23 objection to it being sealed or not being unsealed. I mean,  
24 they're just a diatribe of text messages between the  
25 commissioner --

1           **THE COURT:** Yeah. We don't need to --

2           **MR. DRUMMOND:** No curse words, I don't think.

3           **THE COURT:** Because it just clouds the agreement  
4 here. Everyone's in agreement to this proposed consent decree.  
5 It's a collateral matter. Agreed?

6           **MR. O'CONNOR:** Agreed.

7           **THE COURT:** General?

8           **MR. DRUMMOND:** Yes.

9           **THE COURT:** All right. If there's nothing further,  
10 we are in recess.

11                           *(The proceedings were concluded)*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Brian P. Neil, a Certified Court Reporter for the Northern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 29th day of January 2025.

s/ Brian P. Neil

---

*Brian P. Neil, RMR-CRR*  
*United States Court Reporter*